

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Fort Worth Division**

Outsourcing Facilities Association, *et al.*,

Plaintiffs,

v.

U.S. Food and Drug Administration, *et al.*,

Defendants, and

Eli Lilly and Company,

Intervenor-Defendant.

Case No. 4:24-cv-00953-P

JOINT MOTION FOR SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 6(b), the parties jointly move for an order (i) extending Federal Defendants' and Intervenor-Defendant's (collectively, Defendants) time to respond to Plaintiffs' Complaint until after the Court has ruled on the parties' forthcoming dispositive summary judgment motions, and (ii) requiring that, regarding Plaintiffs' preliminary injunction motion, any non-party seeking leave to file an amicus brief in support of Plaintiffs or Defendants do so by February 11, 2025 or February 18, 2025, respectively. In support of their motion, the parties state as follows:

1. On October 7, 2024, Plaintiffs sued the U.S. Food and Drug Administration (FDA) challenging the agency's decision to remove tirzepatide from the drug shortage list, ECF No. 1, and moved for a preliminary injunction shortly thereafter, ECF No. 7.

2. On October 11, 2024, Federal Defendants filed an unopposed motion to voluntarily remand the case to the agency and to stay proceedings in this litigation. ECF

No. 27. The Court granted that motion on the same day and later administratively closed the case on October 29. ECF Nos. 28, 29.

3. On December 19, 2024, FDA issued a new decision on remand. *See* ECF No. 32-1 (declaratory order).

4. The Court subsequently ordered the case administratively reopened, ECF No. 69, and granted Eli Lilly's motion to intervene, ECF No. 51, but it has not expressly lifted the stay entered on October 11, 2024.

5. Following a hearing on January 14, 2025, the Court set deadlines regarding Plaintiffs' preliminary injunction motion and stated its intent to "order the Parties to brief their summary judgment motions on an expedited basis" after it resolves the preliminary injunction motion. *Id.*

6. Consistent with the Court's scheduling order, Plaintiffs filed their preliminary injunction motion on January 28, 2025. On the same date, they filed an Amended Complaint. *See* ECF No. 68.

7. Defendants must file their oppositions to Plaintiffs' motion by February 18, 2025, and Plaintiffs must file their reply brief by February 25, 2025.

8. To avoid needless expenditure of time and resources, the parties respectfully request that this Court extend Defendants' time to respond to the Complaint until after the Court has ruled on the parties' dispositive summary judgment motions. Filing an answer in Administrative Procedure Act cases, such as this one, serves little purpose because "the 'complaint, properly read, actually presents no factual allegations, but rather only arguments about the legal conclusion to be drawn about the

agency action.’’ *Rempfer v. Sharfstein*, 583 F.3d 860, 865 (D.C. Cir. 2009) (quoting *Marshall Cnty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993)). When a complaint, properly read, is best understood as presenting legal arguments, requiring Defendants to prepare an answer that would “admit or deny the allegations asserted against it,” Fed. R. Civ. P. 8(b)(1)(B), would do little to aid the Court or make the case any more suitable for expeditious resolution. Thus, good cause exists for an extension.

9. In addition, the parties have been contacted by third parties interested in filing amicus briefs regarding Plaintiffs’ preliminary injunction motion. To ensure an orderly briefing process, the parties respectfully request that the Court enter the following deadlines for any third parties seeking to file amicus briefs:

- a. Any person seeking leave to file an amicus brief in support of Plaintiffs must do so by filing a motion under L.R. 7.2(b) on or before February 11, 2025.
- b. Any person seeking leave to file an amicus brief in support of Defendants must do so by filing a motion under L.R. 7.2(b) on or before February 18, 2025.

10. Accordingly, the parties respectfully request that the Court enter an order:

- (i) extending Defendants’ deadline to respond to the Complaint until after the Court has ruled on the parties’ forthcoming dispositive summary judgment motions, and
- (ii) requiring that, regarding Plaintiffs’ preliminary injunction motion, any amicus brief in support of Plaintiffs be filed on or before February 11, 2025, and any amicus brief in

support of Defendants be filed on or before February 18, 2025. A proposed order is attached hereto.

DATED: FEB. 11, 2025

/s/ Andrew M. Grossman

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the CM/ECF system, will be sent via electronic mail to the registered participants as identified on the Notice of Electronic Filing.

February 11, 2025

/s/ Oliver McDonald
OLIVER McDONALD